



## Senate

General Assembly

**File No. 504**

*January Session, 2011*

Substitute Senate Bill No. 860

*Senate, April 13, 2011*

The Committee on Planning and Development reported through SEN. CASSANO of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### **AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (g) of section 8-3 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2011*):

4 (g) (1) The zoning regulations may require that a site plan be filed  
5 with the commission or other municipal agency or official to aid in  
6 determining the conformity of a proposed building, use or structure  
7 with specific provisions of such regulations. If a site plan application  
8 involves an activity regulated pursuant to sections 22a-36 to 22a-45,  
9 inclusive, the applicant shall submit an application for a permit to the  
10 agency responsible for administration of the inland wetlands  
11 regulations not later than the day such application is filed with the  
12 zoning commission. The commission shall, within the period of time  
13 established in section 8-7d, accept the filing of and shall process,

14 pursuant to section 8-7d, any site plan application involving land  
15 regulated as an inland wetland or watercourse under chapter 440. The  
16 decision of the zoning commission shall not be rendered on the site  
17 plan application until the inland wetlands agency has submitted a  
18 report with its final decision. In making its decision, the commission  
19 shall give due consideration to the report of the inland wetlands  
20 agency and if the commission establishes terms and conditions for  
21 approval that are not consistent with the final decision of the inland  
22 wetlands agency, the commission shall state on the record the reason  
23 for such terms and conditions. A site plan may be modified or denied  
24 only if it fails to comply with requirements already set forth in the  
25 zoning or inland wetlands regulations. Approval of a site plan shall be  
26 presumed unless a decision to deny or modify it is rendered within the  
27 period specified in section 8-7d. A certificate of approval of any plan  
28 for which the period for approval has expired and on which no action  
29 has been taken shall be sent to the applicant within fifteen days of the  
30 date on which the period for approval has expired. A decision to deny  
31 or modify a site plan shall set forth the reasons for such denial or  
32 modification. A copy of any decision shall be sent by certified mail to  
33 the person who submitted such plan within fifteen days after such  
34 decision is rendered. The zoning commission may, as a condition of  
35 approval of any modified site plan, require a bond in an amount not to  
36 exceed the cost to perform any modifications required by such  
37 modified site plan plus an additional amount of up to ten per cent of  
38 the amount of the bond and with surety and conditions satisfactory to  
39 it, securing that any modifications of such site plan are made or may  
40 grant an extension of the time to complete work in connection with  
41 such modified site plan. [The commission may condition the approval  
42 of such extension on a determination of the adequacy of the amount of  
43 the bond or other surety furnished under this section.] The commission  
44 shall publish notice of the approval or denial of site plans in a  
45 newspaper having a general circulation in the municipality. In any  
46 case in which such notice is not published within the fifteen-day  
47 period after a decision has been rendered, the person who submitted  
48 such plan may provide for the publication of such notice within ten

49 days thereafter. The provisions of this subsection shall apply to all  
50 zoning commissions or other final zoning authority of each  
51 municipality whether or not such municipality has adopted the  
52 provisions of this chapter or the charter of such municipality or special  
53 act establishing zoning in the municipality contains similar provisions.

54 (2) To satisfy any bond requirement, the commission shall accept, at  
55 the discretion of the person posting such bond, surety bonds, cash  
56 bonds in a form acceptable to the commission, passbook or statement  
57 savings accounts in a form acceptable to the commission and other  
58 surety including, but not limited to, letters of credit, provided the  
59 financial institution or other entity issuing any letter of credit is  
60 acceptable to the commission. Such bond may, at the discretion of the  
61 person posting such bond, be posted at any time before all  
62 modifications of the site plan are complete, except that the commission  
63 may require a bond for erosion control prior to the commencement of  
64 any such modifications. No certificate of occupancy shall be issued  
65 before a required bond is posted. For any site plan that is approved for  
66 development in phases, the surety provisions of this section shall  
67 apply as if each phase was approved as a separate site plan.  
68 Notwithstanding the provisions of any special act, municipal charter  
69 or ordinance, no commission shall require a bond or other surety to  
70 securitize the maintenance of roads, streets or other improvements  
71 associated with such site plan.

72 (3) If the person posting a bond under this section requests a release  
73 of all or a portion of such bond, the commission or its agent shall, not  
74 later than thirty days after receiving such request, (A) release any such  
75 bond or portion thereof, provided the commission or its agent is  
76 reasonably satisfied that the modifications for which such bond or  
77 portion thereof was posted have been completed, or (B) provide the  
78 person posting such bond with a written explanation as to the  
79 additional modifications that must be completed before such bond or  
80 portion thereof may be released.

81 Sec. 2. Section 8-25 of the general statutes is repealed and the

82 following is substituted in lieu thereof (*Effective October 1, 2011*):

83 (a) No subdivision of land shall be made until a plan for such  
84 subdivision has been approved by the commission. Any person, firm  
85 or corporation making any subdivision of land without the approval of  
86 the commission shall be fined not more than five hundred dollars for  
87 each lot sold or offered for sale or so subdivided. Any plan for  
88 subdivision shall, upon approval, or when taken as approved by  
89 reason of the failure of the commission to act, be filed or recorded by  
90 the applicant in the office of the town clerk not later than ninety days  
91 after the expiration of the appeal period under section 8-8, or in the  
92 case of an appeal, not later than ninety days after the termination of  
93 such appeal by dismissal, withdrawal or judgment in favor of the  
94 applicant but, if it is a plan for subdivision wholly or partially within a  
95 district, it shall be filed in the offices of both the district clerk and the  
96 town clerk, and any plan not so filed or recorded within the prescribed  
97 time shall become null and void, except that the commission may  
98 extend the time for such filing for two additional periods of ninety  
99 days and the plan shall remain valid until the expiration of such  
100 extended time. All such plans shall be delivered to the applicant for  
101 filing or recording not more than thirty days after the time for taking  
102 an appeal from the action of the commission has elapsed or not more  
103 than thirty days after the date that plans modified in accordance with  
104 the commission's approval and that comply with section 7-31 are  
105 delivered to the commission, whichever is later, and in the event of an  
106 appeal, not more than thirty days after the termination of such appeal  
107 by dismissal, withdrawal or judgment in favor of the applicant or not  
108 more than thirty days after the date that plans modified in accordance  
109 with the commission's approval and that comply with section 7-31 are  
110 delivered to the commission, whichever is later. No such plan shall be  
111 recorded or filed by the town clerk or district clerk or other officer  
112 authorized to record or file plans until its approval has been endorsed  
113 thereon by the chairman or secretary of the commission, and the filing  
114 or recording of a subdivision plan without such approval shall be void.  
115 Before exercising the powers granted in this section, the commission  
116 shall adopt regulations covering the subdivision of land. No such

117 regulations shall become effective until after a public hearing held in  
118 accordance with the provisions of section 8-7d. Such regulations shall  
119 provide that the land to be subdivided shall be of such character that it  
120 can be used for building purposes without danger to health or the  
121 public safety, that proper provision shall be made for water, sewerage  
122 and drainage, including the upgrading of any downstream ditch,  
123 culvert or other drainage structure which, through the introduction of  
124 additional drainage due to such subdivision, becomes undersized and  
125 creates the potential for flooding on a state highway, and, in areas  
126 contiguous to brooks, rivers or other bodies of water subject to  
127 flooding, including tidal flooding, that proper provision shall be made  
128 for protective flood control measures and that the proposed streets are  
129 in harmony with existing or proposed principal thoroughfares shown  
130 in the plan of conservation and development as described in section  
131 8-23, especially in regard to safe intersections with such thoroughfares,  
132 and so arranged and of such width, as to provide an adequate and  
133 convenient system for present and prospective traffic needs. Such  
134 regulations shall also provide that the commission may require the  
135 provision of open spaces, parks and playgrounds when, and in places,  
136 deemed proper by the planning commission, which open spaces, parks  
137 and playgrounds shall be shown on the subdivision plan. Such  
138 regulations may, with the approval of the commission, authorize the  
139 applicant to pay a fee to the municipality or pay a fee to the  
140 municipality and transfer land to the municipality in lieu of any  
141 requirement to provide open spaces. Such payment or combination of  
142 payment and the fair market value of land transferred shall be equal to  
143 not more than ten per cent of the fair market value of the land to be  
144 subdivided prior to the approval of the subdivision. The fair market  
145 value shall be determined by an appraiser jointly selected by the  
146 commission and the applicant. A fraction of such payment the  
147 numerator of which is one and the denominator of which is the  
148 number of approved parcels in the subdivision shall be made at the  
149 time of the sale of each approved parcel of land in the subdivision and  
150 placed in a fund in accordance with the provisions of section 8-25b.  
151 The open space requirements of this section shall not apply if the

152 transfer of all land in a subdivision of less than five parcels is to a  
153 parent, child, brother, sister, grandparent, grandchild, aunt, uncle or  
154 first cousin for no consideration, or if the subdivision is to contain  
155 affordable housing, as defined in section 8-39a, equal to twenty per  
156 cent or more of the total housing to be constructed in such subdivision.  
157 Such regulations, on and after July 1, 1985, shall provide that proper  
158 provision be made for soil erosion and sediment control pursuant to  
159 section 22a-329. Such regulations shall not impose conditions and  
160 requirements on manufactured homes having as their narrowest  
161 dimension twenty-two feet or more and built in accordance with  
162 federal manufactured home construction and safety standards or on  
163 lots containing such manufactured homes which are substantially  
164 different from conditions and requirements imposed on single-family  
165 dwellings and lots containing single-family dwellings. Such  
166 regulations shall not impose conditions and requirements on  
167 developments to be occupied by manufactured homes having as their  
168 narrowest dimension twenty-two feet or more and built in accordance  
169 with federal manufactured home construction and safety standards  
170 which are substantially different from conditions and requirements  
171 imposed on multifamily dwellings, lots containing multifamily  
172 dwellings, cluster developments or planned unit developments. The  
173 commission may also prescribe the extent to which and the manner in  
174 which streets shall be graded and improved and public utilities and  
175 services provided and, in lieu of the completion of such work and  
176 installations previous to the final approval of a plan, the commission  
177 may accept a bond in an amount and with surety and conditions  
178 satisfactory to it securing to the municipality the actual construction,  
179 maintenance and installation of such public improvements and utilities  
180 within a period specified in the bond. Such regulations may provide,  
181 in lieu of the completion of the work and installations above referred  
182 to, previous to the final approval of a plan, for an assessment or other  
183 method whereby the municipality is put in an assured position to do  
184 such work and make such installations at the expense of the owners of  
185 the property within the subdivision. Such regulations may provide  
186 that in lieu of either the completion of the work or the furnishing of a

187 bond or other surety as provided in this section, the commission may  
188 authorize the filing of a plan with a conditional approval endorsed  
189 thereon. Such approval shall be conditioned on (1) the actual  
190 construction, maintenance and installation of any improvements or  
191 utilities prescribed by the commission, or (2) the provision of a bond or  
192 other surety as provided in this section. Upon the occurrence of either  
193 of such events, the commission shall cause a final approval to be  
194 endorsed thereon in the manner provided by this section. Any such  
195 conditional approval shall lapse five years from the date it is granted,  
196 provided the applicant may apply for and the commission may, in its  
197 discretion, grant a renewal of such conditional approval for an  
198 additional period of five years at the end of any five-year period,  
199 except that the commission may, by regulation, provide for a shorter  
200 period of conditional approval or renewal of such approval. Any  
201 person who enters into a contract for the purchase of any lot  
202 subdivided pursuant to a conditional approval may rescind such  
203 contract by delivering a written notice of rescission to the seller not  
204 later than three days after receipt of written notice of final approval if  
205 such final approval has additional amendments or any conditions that  
206 were not included in the conditional approval and are unacceptable to  
207 the buyer. Any person, firm or corporation who, prior to such final  
208 approval, transfers title to any lot subdivided pursuant to a conditional  
209 approval shall be fined not more than one thousand dollars for each lot  
210 transferred. Nothing in this subsection shall be construed to authorize  
211 the marketing of any lot prior to the granting of conditional approval  
212 or renewal of such conditional approval.

213 (b) The regulations adopted under subsection (a) of this section shall  
214 also encourage energy-efficient patterns of development and land use,  
215 the use of solar and other renewable forms of energy, and energy  
216 conservation. The regulations shall require any person submitting a  
217 plan for a subdivision to the commission under subsection (a) of this  
218 section to demonstrate to the commission that such person has  
219 considered, in developing the plan, using passive solar energy  
220 techniques which would not significantly increase the cost of the  
221 housing to the buyer, after tax credits, subsidies and exemptions. As

222 used in this subsection and section 8-2, passive solar energy techniques  
223 mean site design techniques which maximize solar heat gain, minimize  
224 heat loss and provide thermal storage within a building during the  
225 heating season and minimize heat gain and provide for natural  
226 ventilation during the cooling season. The site design techniques shall  
227 include, but not be limited to: (1) House orientation; (2) street and lot  
228 layout; (3) vegetation; (4) natural and man-made topographical  
229 features; and (5) protection of solar access within the development.

230 (c) The regulations adopted under subsection (a) of this section,  
231 may, to the extent consistent with soil types, terrain, infrastructure  
232 capacity and the plan of development for the community, provide for  
233 cluster development, and may provide for incentives for cluster  
234 development such as density bonuses, or may require cluster  
235 development.

236 (d) (1) To satisfy any bond or other surety requirement in this  
237 section, the commission shall accept, at the discretion of the person  
238 posting such bond or other surety, surety bonds, cash bonds in a form  
239 acceptable to the commission, passbook or statement savings accounts  
240 in a form acceptable to the commission and other surety including, but  
241 not limited to, letters of credit, provided the financial institution or  
242 other entity issuing any letter of credit is acceptable to the commission.  
243 Such bond or other surety may, at the discretion of the person posting  
244 such bond or other surety, be posted at any time before all public  
245 improvements and utilities are constructed and installed, except that  
246 the commission may require a bond or other surety for erosion control  
247 prior to the commencement of any such construction or installation.  
248 No lot shall be transferred to a buyer before any required bond or  
249 other surety is posted. For any subdivision that is approved for  
250 development in phases, the surety provisions of this section shall  
251 apply as if each phase was approved as a separate subdivision.  
252 Notwithstanding the provisions of any special act, municipal charter  
253 or ordinance, no commission shall require a bond or other surety to  
254 securitize the maintenance of roads, streets or other improvements  
255 associated with such subdivision.



256       (2) If the person posting a bond under this section requests a release  
257       of all or a portion of such bond, the commission shall, not later than  
258       thirty days after receiving such request, (A) release any such bond or  
259       portion thereof, provided the commission or its agent is reasonably  
260       satisfied that the modifications for which such bond or portion thereof  
261       was posted have been completed, or (B) provide the person posting  
262       such bond with a written explanation as to the additional  
263       modifications that must be completed before such bond or portion  
264       thereof may be released.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2011	8-3(g)
Sec. 2	October 1, 2011	8-25

**PD**       *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

---

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
All Municipalities	Cost	Potential	Potential

**Explanation**

Enactment of this bill may increase the likelihood that a municipality will not have access to sufficient funds to complete or remediate public improvements in cases of default or inadequate work by developers engaged in site plan modifications or subdivision development. To the extent that a municipality elects to complete or remediate any unfinished or inadequate work, corresponding costs, which may be of significant magnitude, would be incurred.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 860*****AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS.*****SUMMARY:**

This bill expands the types of surety that a person may use to fulfill a bond requirement, which a municipal land use commission may require for modified site plan or subdivision approval. Under current law, a commission may require a bond in an amount and with surety and conditions it sets. The bill allows the person to choose the surety form, including, for example, a statement savings account, as long as it is acceptable to a commission.

It also changes the surety process, providing additional leeway for the person posting the bond or other surety. The bill authorizes the person posting the required site or subdivision plan bond to post it at any time before completing all site plan modifications or subdivision public improvements or utilities, except that a commission may require a bond or surety for erosion control before work can start. Before the required bond or other surety is posted, it prohibits issuing certificates of occupancy for site plans and transferring lots to buyers for subdivision plans.

The bill:

1. limits the bond amount a zoning commission may require for site plan modifications;
2. establishes that, for phased development, the surety requirements apply as if each phase is approved as a separate site plan or subdivision; and
3. prohibits any land use commission from requiring a bond or

other surety to secure the maintenance of roads, streets, or other improvements associated with a site plan or subdivision.

The bill requires a commission to (1) release all or part of a site plan or subdivision related bond within 30 days of the person who posted the bond requesting it, if the commission is reasonably satisfied required work has been completed, or (2) explain in writing what work is still required for release, if it is not reasonably satisfied.

The bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2011

## **SURETY FOR SITE PLAN MODIFICATION AND SUBDIVISION FINAL APPROVAL**

### ***Modified Site Plans***

Under current law, a municipal land use commission may (1) require a bond in an amount and with surety and conditions it sets as a condition for approving any modified site plan or (2) grant an extension for completion of work on the modified site plan with approval conditioned on whether the bond or other surety amount is adequate. (Current law is silent on what constitutes “other surety.”) The bill (1) limits the bond amount on a modified site plan to no more than the cost of performing the modifications plus an additional 10% of the bond amount and (2) eliminates the option to condition extension approval on an unspecified amount of bond or other surety. It also specifies the type of surety that may be used to meet current law’s bond requirement (see below).

### ***Subdivisions***

Under current law, a land use commission may, for subdivision plan approval, accept a bond in an amount and with surety and conditions it finds satisfactory for securing the actual construction, maintenance, and installation of the subdivision’s streets and utilities, as specified in the bond, in lieu of the work being completed before final plan approval. A commission may authorize a developer to file a plan with a conditional approval based on (1) the actual construction,

maintenance, and installation of any improvements or utilities the commission sets or (2) a bond. (By law, if work is completed or a bond furnished, the commission must endorse final plan approval.) The bill authorizes other surety (see below).

### ***Other Surety for Site Plan Modification and Subdivision Approval***

To satisfy a bond requirement for modified site plan or subdivision plan approval, the bill requires municipal land use commissions to accept, at the discretion of the person posting the bond, as surety:

1. surety bonds;
2. cash bonds in a form the commission finds acceptable;
3. passbook or statement savings accounts in a form acceptable to the commission; and
4. other surety, including but not limited to letters of credit, provided the commission finds the financial institution or other entity issuing any letter of credit acceptable.

### **BOND RELEASE**

Under the bill, the commission must release a bond or part of it when reasonably satisfied that the modifications the bond covered have been completed. Current law is silent on bond release.

If not satisfied, the bill requires the commission to provide the person posting the bond a written explanation describing the additional modifications that must be completed for release. In the case of a site plan, the bill also authorizes a commission's agent to release all or part of a bond. Apparently, this also applies to sureties other than bonds that are permitted under the bill.

### **BACKGROUND**

#### ***Related Bill***

SB 896 (File 218) alters the municipal review, decision, and appeal process for a site or subdivision plan, primarily by changing who is

and may be involved in reviewing and determining whether to approve a plan. Specifically, the bill requires a developer to submit a site plan to a municipal official authorized by a planning and zoning commission, instead of the commission itself, and transfers the commission's corresponding duties under existing law to the official. For a subdivision plan, it authorizes a commission to delegate its duties to an agent to review and decide whether to approve the plan and extends the corresponding duties to the agent.

***Planning and Zoning Commissions***

By law, a municipality may have a planning (CGS § 8-18), zoning (CGS § 8-1), or a combined planning and zoning commission (CGS § 8-4a). A combined commission has all the powers and duties of both a planning commission and zoning commission.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 17      Nay 3      (03/25/2011)